IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5644 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements?

2.   To be referred to the Reporter or not?

3.   Whether Their Lordships wish to see the fair copy
        of the judgement?

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder?

5.   Whether it is to be circulated to the Civil Judge?

   1 to 5 NO

ICHCHHABEN D/O NAROTTAM   BHAGUBHAI DESAI
Versus
      SURAT MUNICIPAL CORPORATION

Appearance:
      MS VASUBEN P SHAH, Sr.Advocate with Ms.K   J
      Brahmbhatt for Petitioner
      MR PRASHANT G DESAI for Respondent No. 1, 2

      CORAM : MR.JUSTICE N.N.MATHUR
              Date of decision: 23/08/96

ORAL JUDGMENT

  By way of this Special Civil Application under
Article 226 of the Constitution of India the petitioner
seeks direction to quash and set aside the notice dated
3.7.1995-Annexure 'D' issued by the respondent-Surat

Municipal Corporation under sections 260 and 267 of the Bombay Provincial Municipal Corporations Act.

2. The say of the petitioner is that he submitted an application to the respondent corporation for sanction of building plan under the Bombay Provincial Municipal Corporations Act (for short, 'the Act') and the Town Planing Act on 21.9.1993. This was rejected by the repsondent No.2 by order dated 6.10.1993 on certain technical queries. On 2.8.1993, the petitioner's architect removed all the so-called queries and again requested respondent No.2 to sanction the resubmitted plan. On 4.7.1995, respondent No.2 has issued the impugned notice on the ground that they are contemplating acquisition for the purpose of constructing dwelling unit for the weaker section of the society.

3. One Mr Dhirajlal Ishwarlal Darji, Zonal Officer of the Surat Municipal Corporation has filed an affidavit stating that the petitioner's application for sanction was rejected on valid and good reasons. It is denied that the petitioner has resubmitted the plan on 2.8.1994. The preliminary rejection was intimated to the petitioner within the stipulated period of 30 days. It is asserted that the petitioner has raised the construction without sanction of the Corporation.

4. The question whether building permission can be refused on the contemplated acquisition is no longer res integra. The Division Bench of this Court in the case of Surat Municipal Corporation v. Bhikabhai Morarbhai Patel & Ors., reported in 1994(2) XXXV(2) GLR 947. held that the contemplated acquisition under section 78 of the Act is not a ground to refuse building permission. This judgment has been followed in a number of cases. A reference has been made to the judgment rendered by this Court on 14.9.1995 in Special Civil Application No.7127/91. In that view of the matter, the impugned order at Annexure 'D' to this petition cannot be sustained.

5. It is submitted by Ms. V P Shah, Sr.Advocate for the petitioner that the petitioner will submit a fresh application after removing the queries as shown in the letter dated 6.10.1993. If such an application is filed, the respondent shall decide the same within a period of 30 days from the date of receipt of the same. It would be desirable on the part of the respondent to point out defects or objections, if any, before the application is decided.

6. In view of the aforesaid, this petition deserves
to be allowed only to the limited extent of quashing and
setting aside the impugned order to the extent of notice
under section 260 on the   ground   of   contemplated
acquisition. The petitioner may submit fresh application
for building permission together with necessary building
plan in accordance with the provisions of BPMC Act and
the rules.   If such an application is filed, the same
shall be considered in accordance with the rules as
indicated above.   The application shall not be rejected
on the ground of contemplated acquisition.

Rule is made absolute to the aforesaid extent.
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